

IN THE UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION

DERRICK BRISCOE, #60259-080,

Petitioner,

v.

DAN JOSLIN,

Defendants.

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Civil Action No. **3:06-CV-78-L**

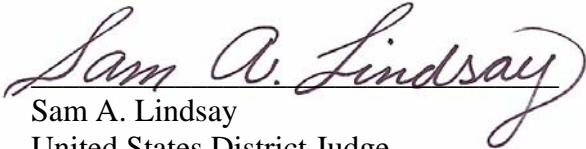
ORDER

This is a habeas petition brought under 28 U.S.C. § 2241. Pursuant to 28 U.S.C. § 636(b) and an order of the court in implementation thereof, this action was referred to the United States magistrate judge for proposed findings and recommendation. On November 15, 2006, the Findings, Conclusions and Recommendation of the United States Magistrate Judge were filed, to which no objections were filed. After making an independent review of the pleadings, file and record in this case and the magistrate judge's Report, the court **determines** that the magistrate judge's findings and conclusions are correct.

Although Petitioner Briscoe has characterized his petition as one brought under 28 U.S.C. § 2241, his petition attacks or challenges enhancements applied during his sentencing, and it should have been brought as one pursuant to 28 U.S.C. § 2255. A petition pursuant to § 2255 must be brought in the district of the court that sentenced the petitioner. *See Ojo v. INS*, 106 F.3d 680, 683 (5th Cir. 1997). In this case, Briscoe would have had to file his petition in the Western District of Texas. As he has failed to do so, this court is without jurisdiction to entertain his petition, brought pursuant to § 2241. Accordingly, the court **accepts** the Findings, Conclusions and

Recommendation of the United States Magistrate Judge as those of the court. The court hereby **dismisses** this action **without prejudice for lack of jurisdiction**.

It is so ordered this 3rd day of January, 2007.


Sam A. Lindsay
United States District Judge